Remarks

Thorough examination by the Examiner is noted and appreciated.

No amendments have been made. No new matter has been added.

Claim Rejections under 35 USC 103(a)

1. Claims 1-5, and 9-13 stand rejected under 35 USC 103(a) as being unpatentable over Chou et al. (US 6,240,400) in view of Johnson et al. (US 6,047,274).

As noted in the Applicants discussion of the prior art Background of the Invention, Chou et al. disclose a method for setting up an **open market** for **negotiating the purchase and sale** of excess capacity in a semiconductor manufacturing capacity market (see Abstract; e.g., col 1, lines 39-44; col 2, lines 4-12). In the method and system of Chou et al., an **open market** system is set up to allow the **buying and selling (trading)** of manufacturing capacity, a market similar to a commodity or equity

market. Critical to the **open market system** of Chou et al. is a **neutral 3d party** performing a **broker function** between buyers and sellers (col 1, lines 65- col 2, line 3).

Nowhere do Chou et al. suggest or disclose an auction market such as applicants disclose and claim including:

"auctioning, while employing a computer based auction method, the first capacity for producing the at least one specified product to a pool of bidders comprising at least one bidder;

determining from the pool of bidders at least one winning bidder; and

fabricating, for the at least one winning bidder, a quantity of the at least one specified product from the manufacturing facility while employing the first capacity for producing the at least one specified product."

Rather, the **open market system** of Chou et al. works by a

different principal of operation than the **auction system** disclosed and claimed by Applicants. In the open market system of Chou et al., **multiple asking prices from multiple sellers** (who **are not required** to have a fabrication capacity) is communicated to multiple buyers (through a neutral 3d party **broker**; the buyers then bid in relation to the **multiple asking prices** in competition with other buyers, and the **asking prices are adjusted** in response to bids (i.e., an open market). Successful buyers may then **resell their manufacturing capacity** on the open market.

In contrast, Applicants disclose and claim an **auction system** where a pool (multiple) of bidders bid, according to a computer system, on **a production capacity of a fabrication facility** (seller), resulting in at least one winning **bidder.** Applicants do not disclose or claim an **open market system** (including a system for **adjusting an asking price in response to bids** as in the **open market system of Chou**, or provide for a neutral 3d party (**broker**) between buyers and sellers in an **open market system where the broker adjusts the asking price in response to bids.**

On the other hand, Johnson et al. disclose an **auction service between energy suppliers.** In the auction method of Johnson, multiple competing suppliers (providers) supply bids

(offers to supply energy **at a given rate** to a particular end user) to a **bidding moderator**. The **bidding moderator** then transmits **competing bids** from **other competing providers** to each of the suppliers, who in turn **may adjust their own bids up or down** in relation to available information such as **other competing supplier bids**, consideration of the end user, and consideration of excess capacity of **all competing suppliers** (see Abstract; col 6, lines 20 - 36). The **bidding moderator** then **selects from among the supplier bids** (col 6, lines 65 - col 7, line 2) to supply energy to the end user. Thus, in the system of Johnson et al., **multiple energy suppliers** with excess capacity compete in a **supply auction system** through a **bidding moderator** to supply energy to end users (see e.g., col 7, lines 43-51).

Thus, even assuming *arguendo* that Johnson et al. is analogous art, there appears to be no apparent motivation to combine the teachings of the **supplier auction system** of Johnson et al. with the **open market system** of Chou et al., except for Applicants disclosure. The **supplier auction system** of Johnson et al. and the **open market system** of Chou et al., each work by a **different principal of operation**. For example in Chou et al. who teaches an **open market system** where a **neutral broker adjusts an asking price in response to bids** versus Johnson et al. who teach

a **supply auction system** where **competing suppliers bid** to **supply** excess capacity (energy) to end users.

Moreover, any attempt to modify the teachings of either Chou et al. or Johnson et al. to achieve Applicants **auction among buyers** of **excess manufacturing capacity** would destroy the principal of operation of either method and render both the methods of Chou et al. and Johnson et al. unsuitable for their intended purpose.

Furthermore, even assuming *arguendo*, a proper motivation for combining of the teachings of Chou et al. and Johnson et al., such combination does not produce Applicants disclosed and claimed invention. For example, there is no suggestion or teaching in either Chou et al. or Johnson et al., singly, or in combination, of a system where a production capacity of a fabrication facility is auctioned to a pool of buyers, as Applicants have disclosed and claimed.

"Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior

art, and not based on applicant's disclosure." *In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).*

"The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device." *Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).*

"If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).*

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." *In re Ratti, 270 F.2d 810, 123, USPQ 349 (CCPA 1959).*

2. Claims 6-8 and 14-16 stand rejected under 35 USC 103(a) as being unpatentable over Chou et al. (US 6,240,400) in view of Johnson et al. (US 6,047,274), as applied above, and further in

view of Ausubel (US 5,905,975).

Applicants reiterate their comments with respect to Chou et al. and Johnson et al. above.

Ausubel discloses various types of auction formats for auctioning **multiple dissimilar objects** using two intelligent systems (one for the use and one for the auctioneer). Users and auctioneers each use a dedicated system including a database, **where the auctioneer's system communicatively coupled to each user system**, and where flexible bids including future bids for **auction objects** may be entered into a database accessible by the auctioneer (see Abstract/ Examples).

There is no apparent motivation for combining Ausubel with either Chou et al. or Johnson et al., other than Applicants disclosure. The auction system disclosed by Ausubel of auctioning **multiple dissimilar objects** works by a different principle of operation than either the open market system of Chou et al. and the Supplier bidding process of Johnson et al. Moreover, any attempted combination of either Chou et al. or Johnson et al. with the **multiple dissimilar object auction system** of Ausubel, would make the references unsuitable for their

intended purpose.

Even assuming *arguendo*, a proper motivation to combine with either or both Chou et al. and Johnson et al., such combination does not produce Applicants disclosed and claimed invention.

"Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." *In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).*

Since the cited references, alone or in combination, do not produce Applicants disclose and claimed invention, the cited references are insufficient to make out a *prima facie* case of obviousness with respect to Applicants claims.

Response to Examiners Arguments

Examiner argues and cites case law arguing the Chou et al. is analogous art. Applicants have not argued that Chou is not analogous art.

Rather, Applicants have argued that the **open market system** of Chou et al, who disclose an open market system for excess manufacturing capacity where **multiple suppliers and bidders** operate through a neutral third party where an asking price is adjusted in response to multiple bids, works by a different principle of operation that Applicants disclosed and claimed system and does not disclose or suggest Applicants disclosed and claimed system.

Examiner broadly argues, without support, and apparently with reference only to Applicants specification, that Applicants system is obvious since it would be obvious to modify Chou et al. to achieve Applicants system, but Examiner does not point to any suggestion or teaching other than Applicants specification to arrive at Applicants disclosed and claimed invention, and Examiner fails to explain how the open market system of Chou et al. could be modified and still remain suitable for its intended purpose of operating as an **open market system with multiple suppliers.**

Examiner also argues that Johnson et al. is pertinent art since Johnson et al. teach a method for auctioning excess production capacity (energy). Applicants have noted above that,

even assuming *arguendo* that Johnson et al. is analogous art, the bidding system of Johnson et al. where **suppliers bid** to offer excess capacity (energy) to an end user, works by a **different principle of operation** than both Chou et al., as well as Applicants disclosed and claimed invention, and that any combination of Chou et al. and Johnson et al. **does not produce** Applicants disclosed and claimed invention.

The claims remain as previously presented. A favorable reconsideration of Applicants' claims is respectfully requested.

Based on the foregoing, Applicants respectfully submit that the Claims are now in condition for allowance. Such favorable action by the Examiner at an early date is respectfully solicited.

In the event that the present invention as claimed is not in condition for allowance for any reason, the Examiner is respectfully invited to call the Applicants' representative at his Bloomfield Hills, Michigan office at (248) 540-4040 such that necessary action may be taken to place the application in a condition for allowance.

Respectfully submitted,

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